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82-1168

No.

IN THE

Supreme Court of the United States

October Term, 1982

FRANK ANGELO MONACO, an infant under the age of 14 years, by his parent and natural guardian, FRANK ANTHONY MONACO, DIANA LYNN MONACO and FRANK ANTHONY MONACO,

Petitioners,

against

FREDERICK S. FEINER, ALAN L. RUBENSTEIN, IRA RUBENSTEIN, FRED S. LEVINSON, E. RICHARD KINNE, individually and as co-partners in the firm of "JOHN DOE," a partnership, said name "JOHN DOE" being fictitious, true name unknown to Plaintiffs, and SATISH K. ROHATGI, ELIZABETH A. HORTON MEMORIAL HOSPITAL and MIDDLETOWN OBS-GYN ASSOCIATES, P.C.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

Supplement to Petition for a Writ of Certiorari

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The petitioners recognize that the granting of a writ of certiorari usually requires more than the commission of errors by the courts below. The issues involved must concern themselves with matters of great public importance. It is urged that this is just that type of a case. It concerns itself with the very foundations of our judicial system—a fair trial.

What has been happening in the field of medical malpractice is almost unbelievable, in that the medical profession has considered itself beyond the reach of the normal principles of law. There is a conspiracy of silence among the physicians of organized medicine. They will not permit their members to testify against other members, no matter how compelling and truthful such testimony would be. The physician expects that every other member of society must refrain from violating the law with respect to tort or contract, but will loudly shout "traitor" if the violation is directed against a physician and agreed to by another physician. In most instances, expert medical testimony is still required to obtain relief. As a result, such relief from misfeasance by a doctor becomes very difficult because expert testimony is not available.

In the present case, the respondents have stooped to the extreme by promptly punishing the testifying physician during the course of the trial itself and exerting the kind of pressure that is frightening to the physician who was testifying. They called his superior, Dr. Robert Morris. They were belligerent in their condemnation of him in using "poor judgment." They said they would report him to the Chairman of the Department. They said that all of this "hung two doctors and was going to cost them a boodle." He was called a "son of a bitch." There were two other "undisclosed doctors" who were also spoken to, etc. There was nothing subtle about their pressure.

It is no wonder that the truth can be bottled up, stifled and stamped upon. No doctor dare testify to the truth without assuming the risks of being punished.

The subject is one of general concern. Almost daily, something appears in the public eye that stirs our recognition that the judicial system is being constantly obstructed when it applies to the medical profession. Sunday, Jan. 9, it was discussed in the television program "Sixty Minutes." Scores of articles appear in magazines, columns in newspapers, programs on radio and TV. All add up to creating the concept that the medical profession must be considered separate and apart from the rest of us. Organized medicine has had special legislation passed to help the physician in this campaign. The atmosphere is such that one gets the impression that there would be no malpractice cases except for the courts, the judicial system, and the lawyers who seek to enforce them.

The errors in this case are more than just errors of law. They deprived petitioners of a fair trial. They shake the very foundations of a truly just judicial system which should permit a witness to testify as to the truth without worrying that the next day he will be punished; that he will lose his job; that he will be disgraced before his peers as a traitor; that he will find future activities in his profession more difficult. To climax all of this, the jury is shielded from knowing all of the events.

The true administration of justice means more than correcting errors. Justice must be beyond reproach. But even more important, it must be beyond suspicion. We are concerned as much with the integrity of our legal system as the accuracy of its results. In this case, the opportunity exists

to at least, wherever possible, make it clear that the conduct complained of cannot be tolerated with impunity. It will be challenged and stopped.

The writ of certiorari should be granted.

Dated: Middletown, New York
January 24, 1983

Respectfully submitted,

MICHAEL M. PLATZMAN
Attorney for Petitioners